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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,227	09/18/2006	Elizabeth Harumi Kobara Pestell	HF/15-23033/A/PCT	7040
324	7590	01/22/2009	EXAMINER	
JoAnn Villamizar			NGUYEN, THUY-AI N	
Ciba Corporation/Patent Department			ART UNIT	PAPER NUMBER
540 White Plains Road				1796
P.O. Box 2005				
Tarrytown, NY 10591				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/593,227	KOBARA PESTELL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	THUY-AI N. NGUYEN	1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 September 2008.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1- 18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1- 18 and 20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's responses filed on September 8, 2008 have been fully considered.

Claims 1, 3 and 12 are amended. Claim 20 has been added. Claims 1- 18 and 20 are pending.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12- 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 12 does not further limit the scope of claim 3 which is a composition. The Office suggests that claim 12 should be rewritten as independent claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ghosh et al. (US. 2004/0261196) in view of Ghosh et al. (US. 6,090,399).

Regarding claims 1, 2 and 20, Ghosh et al. teach the composition and method for treating fabric articles (abstract and [0119]), wherein the composition comprises antimicrobial agent including 2-(4'-thiazolyl) benzimidazole [0101] which satisfy the formula as recited by the applicant when R<sub>1</sub> is hydrogen. Ghosh et al. teach the composition comprising from about 0.01 to 20 percent of antimicrobial organism [0100], including 2-(4'-thiazolyl)benzimidazole [0101], 1 to 99 percent by weight of surfactants including anionic, nonionic, cationic, and zwitterionic [0095] which is detergent. Ghosh et al. further teach the composition comprising builder, bleach, bleach activator, alcohol, hydrotropes, fabric softening agent [0118], and water in an amount of from 1 to 90 percent by weight of the composition [0112]. Ghosh et al. '196 teach the method of cleaning the fabric articles in conventional laundry process or in a dry cleaning process [0027] in which the cleaning composition should contact with the fabric articles, wherein the conventional cleaning is carried out with a large amount of water at the consumer's home or other place [0004].

Ghosh et al. '196 do not teach of using the composition in the method of cleaning the hard surface. Ghosh et al. '399 teach a composition comprising 2-(4'-thiazolyl) benzimidazole (col. 5: 40- 45) is used for cleaning or disinfecting a hard surface and textiles (col. 12: 35- 60) by direct application of the composition to the surface including dipping, spraying or coating (col. 14: 24- 35). Ghosh et al. '196 and Ghosh et al. '399 are analogous arts because they are in the same field of endeavor; namely, cleaning

composition. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the cleaning method on the hard surface of Ghosh et al.' 399 in the teaching of Ghosh et al. to provide the convenience for the consumer with multiple uses of the product.

Claims 3- 7, and 9- 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ghosh et al. (US. 2004/0261196).

Regarding claims 3 - 4 and 6 -7, Ghosh et al teach the method of treating fabric [0119] with the cleaning composition comprising antimicrobial agent including 2-(4'-thiazolyl)benzimidazole [0101] which satisfy the formula as recited by the applicant when R<sub>1</sub> is hydrogen. Ghosh et al. teach the composition comprising from about 0.01 to 20 percent of antimicrobial organism [0100], including 2-(4'-thiazolyl)benzimidazole [0101], 1 to 99 percent by weight of surfactants including anionic, nonionic, cationic, and zwitterionic [0095] which is detergent. Ghosh et al. further teach the composition comprising builder, bleach, bleach activator, alcohol, hydrotropes, fabric softening agent [0118], and water in an amount of from 1 to 90 percent by weight of the composition [0112].

Ghosh et al. do not specifically teach the amount of builder, bleach, bleach activator, alcohol, hydrotropes, fabric softening agent. The experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. *In re Aller*, 105 USPQ 233. At the time of the invention, it would have been obvious to a person of

ordinary skill in the art to optimize the amount of builder, bleach, bleach activator, alcohol, hydrotropes, fabric softening agent to achieve the desired performance of the cleaning composition. A *prima facie* case of obviousness may be rebutted, however, where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. *In re Boesch and Slaney*, 205 USPQ 215.

Regarding claim 5, Ghosh et al. teach the composition comprising sulfonated oleic acid [0101] which is capable of using as component (b).

Regarding claims 9- 10, Ghosh et al. teach the composition comprising an antimicrobial agent 2,4,4'- trichloro- 2' hydroxyl diphenyl ether [0102], which satisfies the formula as recited by the applicant when p= 0, n= 0, and o= 1, m= 1, and r= 2.

Regarding claim 11, Ghosh et al. teach the composition comprising from about 0.01 to 20 percent of antimicrobial organism [0100], including 2-(4'-thiazolyl)benzimidazole [0101] and 2-hydroxy-diphenyl ether [0102] as described above, 1 to 99 percent by weight of surfactants including anionic, nonionic, cationic, and zwitterionic [0095] which is detergent. Ghosh et al. further teach the composition comprising alcohol, hydrotropes [0118], and water in an amount of from 1 to 90 percent by weight of the composition [0112].

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ghosh et al. (US. 2004/0261196) as applied to claims 3 above in view of Majeti et al. (US. 2003/0212232).

Regarding claim 8, Ghosh et al. teach the method for treating textile, wherein the composition comprises enzyme. However, Ghosh et al. do not specifically teach that the enzyme is cellulose, protease, amylase, and lipase. Majeti et al. teach the composition for treating textile and hard surface, wherein the composition comprises the enzyme including protease, amylase, and lipase [0181]. Majeti et al. and Ghosh et al. are analogous art because they are in the same field of endeavor, namely, home care composition for textile or fabric and other surface, wherein both composition comprises antimicrobial agent 2',4,4'-trichloro-2-hydroxy-diphenyl-ether. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use protease, amylase, and lipase of Majeti et al. in the teaching of Ghosh et al. as an alternative equivalent in order to help break down the stain on the surface being treated.

Claims 12- 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Majeti et al. (US. 2003/0212232) in view of Ghosh et al. (US. 2004/0261196).

Regarding claim 12, Majeti et al. teach the method for washing and fungicidal treatment of textile fibre material [0031] comprising the step of applying or contacting the composition with the surface to be treated [0189], wherein the composition comprising the antimicrobial agent 2-hydroxy diphenyl ether (2',4,4'-trichloro-2-hydroxy-diphenyl-ether [0091].

Majeti et al. do not teach the composition comprising the compound of formula I as recited in claim 1. Ghosh et al. teach the composition comprising antimicrobial agents including 2-(4'-thiazolyl)benzimidazole [0101], and 2,4,4'- trichloro- 2' hydroxyl

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diphenyl ether [0102]. Majeti et al. and Ghosh et al. are analogous art because they are in the same field of endeavor, namely, home care composition for textile or fabric and other surface. At the time of the invention, it would have been obvious to one of ordinary skill in the art to substitute 2-(4'-thiazolyl)benzimidazole of Ghosh et al. as an equivalent alternative in the teaching of Majeti et al. for 2,4,4'- trichloro- 2' hydroxyl diphenyl ether for the same purpose of using hydroxy-diphenyl-ether.

Regarding claim 13, Majeti et al. teach the method, wherein the composition comprising enzyme including protease, amylase, and lipase [0181], wherein the solution in the process is carried out the room temperature [0227].

Regarding claim 14, Majeti et al. teach the method for washing and treating textile, wherein the textile is cotton [0201].

Regarding claim 15, Majeti et al. teach the process, wherein the composition can be in solid [0160], or in liquid formulation [0165].

Regarding claim 16, Majeti et al. teach the process of fungicidal treatment on the hard surface (abstract), wherein the composition further comprising 0.01 to 20 percent of antimicrobial agent [0183], 5 to 70 percent of surfactants [0181], 5- 50 percent of builder [0181], 0.5 to 10 percent of fabric softening agent [0181], and water up to 100 percent by weight (example 16, see the table, p. 16).

Majeti et al. do not teach the composition comprising the compound of formula I as recited in claim 1. Ghosh et al. teach the composition comprising antimicrobial agents including 2-(4'-thiazolyl)benzimidazole [0101], and 2,4,4'- trichloro- 2' hydroxyl diphenyl ether [0102]. Majeti et al. and Ghosh et al. are analogous art because they are

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in the same field of endeavor, namely, home care composition for textile or fabric and other surface. At the time of the invention, it would have been obvious to one of ordinary skill in the art to substitute 2-(4'-thiazolyl)benzimidazole of Ghosh et al. as an equivalent alternative in the teaching of Majeti et al. for 2,4,4'- trichloro- 2' hydroxyl diphenyl ether for the same purpose of using hydroxy-diphenyl-ether.

Regarding claim 17, Majeti et al. teach the process, wherein the composition is used as dishwashing formulation [0151- 0154].

Regarding claim 18, Majeti et al. teach the process, wherein the composition is used for cleaning ceramic surfaces including floor, tiles, bath, sink [0135], toilet bowl [0140], shower walls [0144], glass- ceramic plates [0148], dishes [0151], and laundry [0181].

### ***Response to Arguments***

Applicant's arguments filed on September 08, 2008 have been fully considered but they are not persuasive.

According to the applicant's argument of claims 3- 7 and 9- 11, Ghosh et al. '196 disclose a composition comprising lipophilic fluid in a major amount as said in the argument. However, Ghosh et al '196 also show that the composition further comprises water in an amount of from 1 to 90 percent [0112], and the object of the instant reference is to provide the composition for for cleaning fabrics in commercial laundry, in dry- cleaning and at home [0006], wherein treating fabrics include cleaning fabric articles in conventional laundry process and in dry cleaning process [0027].

According to the applicant's argument of claim 8, because Ghosh '196 and Majeti have similar compositions, one would use the teaching of Majeti to cure the deficiency in the teaching of Ghosh et al. '196.

According to the applicant's argument of claims 12- 18, although Ghosh '196 discloses a composition with high amount of lipophilic fluid, the composition can also have major amount of water as said above, and can use a domestic cleaning composition as said in the rejection. For those reasons, the combination of Ghosh and Majeti is reasonable.

Because applicant's arguments are not persuasive, claims 1- 18 stand rejected, and therefore made final.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THUY-AI N. NGUYEN whose telephone number is (571)270-3294. The examiner can normally be reached on Monday-Friday: 8:30 a.m. - 5:00 p.m. eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

THA

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